SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok **Thursday, 29 September, 2005** **No. 360**

GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No: 20/LD/2005 **Date: 24/9/05**

NOTIFICATION

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 7th day of September, 2005 is hereby published for general information:-

THE SIKKIM LABOUR PROTECTION ACT, 2005
(Act No. 20 of 2005)
AN
ACT

to regulate the employment and conditions of services of employed worker / labour and individual worker / labour and to protect from exploitations and for statistical purpose, by registration of individual worker / labour and to make provisions for certain matters in the interest of public order thereto.

Whereas it is expedient to regulate the employment and conditions of services of worker/ labour and to protect from exploitations and for statistical purpose, by registration of individual worker / labour and to make provisions for certain matters in the interest of public order there to:

Be it enacted by the Legislature of Sikkim in the Fifty- sixth Year of the Republic of India as follows :-

CHAPTER I

Short title extent, commencement and application. 1. 1) This Act may be called the Sikkim Labour Protection Act, 2005.

2) It extends to the whole of Sikkim.

3) It shall come into force on such date or dates as the State Government may, by Notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Act.

4) It shall apply, to all the worker / labour and individual worker/ labour working within the State of Sikkim but does not include the Muster Roll and the Work Charged workers in the Government Departments.

Definitions. 2. In this Act, unless the context otherwise requires.-

(a) "Appellate Authority" means the authority as specified under Section 8 of this Act;

(b) "appropriate Government" means the State Government of Sikkim ;

(c) "domestic worker" means those who work in household works and includes domestic servants, domestic helpers, maid governors etc;

(d) "Employer" means a person by whom a worker / labourer is employed and includes Contractor / Sub- Contractor / Baidar, owners of Shops and Establishments, etc;

(e) "establishment" means:

  (i) any office or Department of the Government or a local authority;

  (ii) any place where any industry, trade, business, manufacture or maintenance and construction works or occupation is carried on;

(f) "Financial Year" means the year commencing on the 1st day of April;

(g) "individual worker / labour" means a worker/ labourer who earns his/ her livelihood independently opting any work / menial job requiring execution of the work through physical capabilities and strength but does not require academic qualification and such work is otherwise not regulated by any other law, rule or regulation in so far as competence to do such work is concerned;

(h) "Inspector" means an Inspector appointed under this Act;

(i) "Magistrate" means Judicial Magistrate and includes Chief Judicial Magistrate;

(j) "Notification" means a Notification published in the Official Gazette;

(k) "porters" mean all the porters who are working in bazars, godowns, in establishment, etc;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "Principal Employer" means :-

  (i) in relation to any office or department of the Government or a local authority, the head of that or such other officer as the Government or the local authority as the case may be, specify in this behalf ;

  (ii) in relation to a factory, the owner or occupier of the factory and where a person has been named as the Manager of the factory;

  (iii) in relation to a any other establishment, any person responsible for the supervision and control of the establishments;

(n) "record" means the records maintained in the form of books or registers or stored in a computer or in such form as may be specified;

(o) "Registering Officer" means an Officer appointed under Section 3 of the Act;

(p) "Schedule" means the Schedule appended to the Act;

(q) "Schedule employment" means any employment in the organized or unorganized Sector as specified in the Schedule;

(r) "wage" means all remuneration capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment;

(s) "worker / labourer" means a person engaged in the Scheduled Employment who has completed the age of 14 years and above and any person employed in or in connection with the work of any establishment to do any unskilled, manual, supervisory work and includes individual worker / labour as defined in clause (g) of Section 2 but does not include any such person who is employed mainly in a managerial or administrative capacity.

CHAPTER II

REGISTRATION

Appointment of of Registering Officers.

3. The State Government may, by notification in the Official Gazette;-
   (a) appoint such persons, being Group B Officers of Government, as it thinks fit to be Registering Officers for the purposes of this Chapter and
   (b) define the limits, within which a Registering Officer shall exercise the powers conferred on him by or under this Act.

Registration of individual workers.

4. (1) Every Principal Employer/ Employer/Contractor/Owners of an establishment to which this Act applies shall, within such period as the State Government may, by Notification in the Official Gazette, fix in this behalf, make an application to the Registering Officer, in such forms and manner and on payment of such fees as may be prescribed, for the registration of all individual workers employed.

(2) Every individual workers or, bazar portars, carpenters, masons, rag picker, quilt maker, plumbers, fitters, cooks, waiters, chanawalas, electricians, drivers (other than government drivers), gothalas, domestic servant, mechanic, barbers, cobblers, hawkers, umbrella repairers, scrap paper and bottle collectors etc. who are working independently to whom this Act applies, shall within such period, as the State Government may, by notification in the Official Gazette, fix in this behalf, make an application to the Registering Officer, in such form and manner and on payment of such fees as may be prescribed, for the registration of individual workers:

Provided that the Registering Officer may entertain any such application for registration after the expiry of the period fixed in this behalf, if the Registering Officer is satisfied that the applicant was prevented by sufficient cause from making the application in time:

Provided further that possession of certificate of registration of labour / worker shall not confer on any individual status or claim of being an ordinary resident of the State.

(3) Within one month after the receipt of an application for registration under sub-section (1) or (2), the Registering Officer shall ,-
   (a) if the application is complete in all respects, register the individual workers and issue to individual workers/ labourers a Certificate of Registration in the prescribed form, and token number to the porters;
   (b) if the application is not complete, return the application to the applicant.

(4) Where within a period of one month after the receipt of an application for registration of individual workers under sub-section (2) and (3) , the Registering Officer does not grant Certificate of Registration as applied for under clause (a) of sub- section (3) and does not return the application under clause (b) of sub-section (3), the Registering Officer shall, within 45 (fortyfive) days of the receipt of an application in this behalf, register the individual worker and issue the Certificate of Registration to the applicant in the prescribed form.

Revocation of registration in

5. If the Registering Officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any worker has been obtained by misrepresentation

certain case.

or suppression of any material fact or that for any other reason the registration has become useless or ineffective and therefore, requires to be revoked, the Registering Officer may, after giving an opportunity to that worker to be heard and with the previous approval of the Government, revoke by order in writing the registration and communicate the order to worker and / or employer.

Prohibition of against employment of workers without registration.

6. (1) No Principal Employer / Employer / Contractor / Owner an establishment to which this Act applies shall employ worker in the establishments unless a worker possesses a Certificate of Registration and token number under this Act .

(2) No individual worker or, bazar portars, carpenters, masons, rag pickers, quilt makers, plumbers, fitters, quilt makers, cooks, waiters, chanawalas, electricians, drivers (other than government drivers), gotholas, domestic servant, mechanic, panwalas, barbers, cobblers, hawkers etc. to which this Act applies shall be allowed to work in Sikkim, unless he or she possesses a Certificate of Registration issued under this Act.

Renewal of Certificate of Registration.

7. The Certificate of Registration of workers granted under clause (a) of sub- section (3) of Section 4, shall be valid up to the end of Financial Year for which it is granted.
An application for renewal shall be submitted not less than fifteen (15) days before the date of expiry of the Registration Certificate or of renewed registration with token number as the case may be, and shall be accompanied by such fees as any be prescribed.

Appeals .

8. (1) Any person aggrieved by an order of the Registering Officer refusing to grant Certificate of Registration or by an order of the Registering Officer revoking Certificate of Registration may prefer an appeal against the Order to the Secretary in the Department of Labour, Government of Sikkim within thirty days from the date of communication of the order of refusal or revocation, as the case may be , provided that an appeal may be admitted after the expiry of the period of thirty days, if the appellant satisfies the Secretary that he was prevented by sufficient cause from preferring the appeal within the said period.

(2) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished by the appellant and by such fees as may be prescribed.

(3) No appeal filed under this section shall be disposed of until appellant is given reasonable opportunity of being heard.

(4) Every order of Appellate Authority confirming, modifying, or reversing the order appealed against shall be final.

CHAPTER III

DUTIES AND OBLIGATION OF PRINCIPAL EMPLOYER / EMPLOYER / CONTRACTORS / OWNERS OF ESTABLISHMENT OR OF INDEPENDENT INDIVIDUAL WORKERS

Duties of Principal Employer/ Contractors/ Owners of establishment or independent individual workers.

9. (1) It shall be the duty of Principal Employer /Employer / Contractor / Owner of establishment or of independent individual workers :-

(a) to furnish such particulars and in such form as any be prescribed and shall apply to the specified authority within fifteen (15) days from the date of employment and for registration of workers;

(b) to furnish such particulars and in such form as any be prescribed to the specified authority within fifteen (15) days where any change occurs in any of the particulars so furnished;

(c) to surrender the Certificate of Registration of workers in the office of Registering Officer after completion of works if any such worker leaves Sikkim on vacation or forever, as the case may be;

(d) to furnish the list of workers who have left Sikkim to the Registering Officer with a copy to nearest Police Station and area Inspector Station in such form as any be prescribed;

(e) to maintain a record register with particulars of workers namely, names, father's name / husband name, sex, age, temporary address, permanent address, designation, rates of wages, date of employment, nature of work with passport size photograph.

CHAPTER IV

WAGES, WELFARE AND OTHER FACILITIES TO BE PROVIDED TO WORKERS

Wage rates and their conditions of service of workers.

10. (1) The wage rates, holidays, hours of work and other conditions of service of workers shall,-

(a) In case where such worker performs in any establishment ; the same or similar kind of work as is being performed by any other worker in that establishment, be the same as those applicable to such other workers; and

(b) In a case where a male worker and a female worker do the same and similar nature of work, then the employer has to pay equal remuneration without discrimination on the ground of Sex.

(c) Every worker shall in no case, be paid less than the wages fixed as per existing policy and law of the State Government of Sikkim.

(d) If a worker works without being absent during the period of 6 (six) days consecutively in a week, he / she shall be given one paid holiday either on Sunday or any other holidays.

(e) Normal working hours of Workers shall be 8 (eight) hours a day.

(f) No person below the age of 14 (fourteen) years shall be employed in any work.

(2) The wages of every person employed in any work shall be paid before the expiry of the seventh day of the succeeding month.

(a) Any establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.

(b) Any other establishment upon or in which more than one thousand persons employed, shall be paid before the expiry of the tenth day.

(3) Notwith standing anything contained in any other law for the time being in force, wages payable to worker under this section shall be paid in cash.

Other facilities.

11. (1) It shall be the duty of every Principal Employer/ Employer/Contractor/ or the Owner of establishment, employing workers in connection with the work of an establishment to which this Act applies, -

(a) to ensure suitable conditions of work to such workers having regard to the fact that they are required to work;

(b) to provide and maintain suitable residential accommodation to such workers during the period of their employment;

(c) to provide the prescribed medical facilities to the workers, free of charge;

(d) to provide such protective clothing and other amenities to the workers as may be prescribed.

(2) In case of fatal accident or serious bodily injury to any such worker while on duty, employer is liable to give notice to the Commissioner for Workmen's Compensation, Sikkim under Section 10 (B) of the Workmen's Compensation Act, 1923.

Responsibility for payment of wages.

12. (1) An employer/Contractor/Owner of establishment shall be responsible for payment of wages to each workers employed by him and such wages shall be paid before the expiry of period as specified in clauses, (a) and (b) of sub-section (2) of Section 10.

(2) Every Principal Employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the Contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the Contractor to ensure the disbursement of wages in the presence of the authorised representative of the Principals Employer.

(4) In case the Contractor fails to make payment of wages within the prescribed period or makes short payment, then the Principal Employer shall be liable to make payment of wages in full or the paid balance due, as the case may be, to the workers employed by the Contractor and recover the amount so paid from the Contractor either by deduction from any amount payable to the Contractor under any contract or as debt payable by the Contractor.

CHAPTER V

INSPECTION AND ENFORCEMENT

Appointment of Inspectors.

13. (1) The State Government may, by notification in the Official Gazette, appoint such persons as it deems fit to be Inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

(2) Subject to any rules made in this behalf, within the local limits for which he/she is appointed, an inspector may,-

(a) if he has reasons to believe that any worker is employed in an establishment, premises or place, to enter, at all reasonable hours, with such assistants (if any), being persons in the service of the Government or any local or other public authority as he thinks fit, such premises, establishment or place for the purpose of, –

(i) satisfying himself whether the provisions of this Act in relation to the registration of workers, conditions of service, payment of wages or other facilities to be provided to such workers are being complied with ;

(ii) examine any register or record or notices required to be kept or exhibited by the provisions of this Act or the rules made there under, and requiring the production there for inspection;

(iii) examine any person found in any such premises, establishment or place for the purposes of determining whether such person is worker;

(iv) seize or take copies of such register, record of wages or notices or particulars of workers or portions there as he may considered relevant in respect of an offence under this Act which he has reason to believe has been committed by Principal Employer, Employer, Contractor or Owner of establishments;

(v) exercise such other powers, as may be prescribed:

Provided that no one shall be required under this section to answer any question or give any statement tending to incriminate himself, for the purpose of investigation of offences under this Act, shall have same powers as an Officer-in-Charge of a Police Station under the Code of Criminal Procedure, 1973 for investigation of cognizable offence except that he shall not have the power to arrest.

Inspector to be public servant.

14. Every Inspector or any other officer as may be appointed by the Registering Officer shall be deemed to be a 'Public Servant' within the meaning of Section 21of the Indian Penal Code, 1860.

Documents required to be produced .

15. Any person required to produce any documents or thing or to give any information required, by the Registering Officer and Inspector shall be deemed to be legally bound to do so within the meaning of Section 175 and Section 176 of the Indian Penal Code (5 of 1860).

Application of the Code of Criminal

16. The provisions of the Code of Criminal Procedure 1973 (2 of 1974) shall so far may be, apply to any search or a seizure under sub-clause (iv) of Clause (a) of sub-section (2)

Prccedure 1973 to any search or seizure.

of Section 13, as applied to any search or seizure made under the authority of a warrant issued under Section 94 of the said Code.

Protection of action taken on good faith.

17. No suit, prosecution of legal proceedings shall lie against any person for anything which is done in good faith or intended to be done under this Act or rules made there under.

Production of registers, records etc. on demand.

18. Every Principal Employer / Employer / Contractor /Owner of establishment and in his absence the Manager / In- charge shall on demand, produce for inspection to an Inspector all registers, records and notices required to be kept under and for the purpose of this Act.

CHAPTER VI

OFFENCES, COGNISANCE OF OFFENCES AND PENALTIES

Offences.

19. Non compliance of any provisions of Sections 4, 6, 7, 9,10,11,12,15,18, 24, 25 or any other provisions under this Act shall be an offence.

Cognisance of offences.

20. Cognisance of offences committed under this Act may be taken on complaint filed before the Court of Judicial Magistrate by a registered worker or a Government recognised Non-Governmental Organization or an Inspector appointed under this Act and such Court shall try the offence.

Penalties.

21. Any Person who contravenes the provision of this Act shall be punished according to the severity of an offence. The punishment for an offence may be categorised as follows:-

(a) Failure to comply with provisions of Section 4, 6 and 7 shall be an offence and the offender shall be punishable with simple imprisonment which may extend upto two month or a fine upto Rs. 2500/- or both and in default to pay the fine simple imprisonment for a period of 20 days.

(b) Failure to comply with provisions of Section 9,10,11 and shall be an offence punishable simple imprisonment upto a period of one month or a fine upto Rs. 5,000/- or both and in default imprisonment for 20 days.

(c) Failure to comply with provisions of Section 15,18, 24 and 25 shall be an offence punishable with simple imprisonment upto a period of 15 days or a fine of Rs 4,000/- or both and in default simple imprisonment for 15 days.

(d) For second and subsequent offences by committing any of the offences under the provisions of this Act simple imprisonment may extend to 3 months or fine which shall extend upto Rs. 10,000/- or both and in default simple imprisonment upto one month.

(e) The penalties are subject to change by way of issue of Notification by the Government.

Limitation of prosecution.

22. No Judicial Magistrate shall take cognisance of an offence under this Act or rule or order unless complaint thereof is made within 6 (six) months fromthe date on which

the alleged commission of the offence first come to the knowledge of registered worker or employer or an Inspector appointed under this Act.

Appeal. 23. An appeal shall lie to the District and Sessions Court of the respective jurisdiction if the party is not satisfied with the order of the Judicial Magistrate. The period of limitation under this Section shall be 60 (sixty) days.

CHAPTER VII

MISCELLANEOUS AND SUPPLEMENTARY

Display of token number. 24. Every registered workers have to display their token number by wearing on chest or on shoulder and if required shall produce such documents or record as may be the case.

Maintenance of registers or records and display of notices. 25. Every Employer shall maintain such registers and records as per clause (e) of sub-section (1) of Section 9 and display on the premises/ establishments or place, such notices as may be prescribed. All registers and recordsshall be kept on the premises of the establishment to which they relate.

Change of registration fees and renewal fees. 26. The registration fees of individual workers and renewal fees are subject to change by way of Notification by the Government after interval of every completion of (5) five years.

Power to make rules. 27. (1) The State Government may, subject to previous publication make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may be made for all or any of the following matters, namely:-

(a) The form of application, form of submitting a statement, the fees and other particulars, the manner in which the registration of individual workers is to be made and form of Registration Certificate, sample of token expand fees for renewal of Certificate of Registration and other relevant forms.

(b) Fixing the rate of wages.

(c) Medical assistance, first aid box, protective clothing and other amenities.

(d) Qualification of Inspectors appointed under this Act and their duties.

(e) Power of Registering Officer and duties.

(f) Register and records to be maintained and notice to be displayed.

(g) Any other matter which is to be or may be prescribed.

Repeal and savings. 28. (1) All the notifications, rules and orders relating to registration of individual workers in Sikkim in force immediately before the commencement this Act are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the notifications, rules, regulations, orders on the subject, shall be deemed to have been done to taken, as far as may be, under the corresponding provisions of this Act.

THE FIRST SCHEDULE
(See Section 2 (Q)

SCHEDULED EMPLOYMENT

1. Agriculture workers.
2. Automobile Engineering works.
3. Bakeries and confectioneries.
4. Construction and maintenance of Roads and Buildings.
5. Construction of projects including dams, tunnels, thermal, hydroelectric and other multipurpose.
6. Dairy, poultry and animal husbandry farming.
7. Casual contingency workers engaged by Government, Semi-government, Government undertakings, Public sector and Private sector undertakings.
8. Distilleries and Breweries.
9. Electronic industries.
10. Handloom industries and establishments.
11. Hotels, Restaurant, Eating houses, Tea shops and Shops and commercial establishments.
12. Loading and unloading of goods and other materials.
13. Printing press.
14. Private motor transport and public motor transport.
15. Making of quilts, mattress, and repairing of cookeries.
16. Sand, stone and chips quarries.
17. Tours and travel and their related trade/ business.
18. Carpentry and Masonry.
19. Small scale Industries.
20. Industries and factories.
21. Cinema and video and their related trade / works.
22. Wood works and furniture.
23. Tea plantation.

By order.

R.K. PURKAYASTHA (SSJS)
LEGAL REMEMBRANCER- CUM -SECRETARY,
LAW DEPARTMENT.

FILE NO. 16(82)/LD/2005